

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

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FLAGSTAR BANK, FBS,

Plaintiff,

- against -

4:19-cv-11512-SFC-EAS

LIVE WELL FINANCIAL, INC.,
MICHAEL HILD,
ERIC GEGNER ROHR, and
CHARLES DARREN STUMBERGER,

Defendants,

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**THE GOVERNMENT'S OPPOSITION TO FLAGSTAR BANK'S
MOTION TO LIFT THE STAY**

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York
Attorney for the United States
of America.

JORDAN ESTES
SCOTT HARTMAN
Assistant United States Attorneys

- Of Counsel -

ARGUMENT

The United States of America, by and through the United States Attorney for the Southern District of New York (“the Government”), respectfully submits this memorandum in opposition to Flagstar Bank’s motion to lift the stay of proceedings as to all defendants except Live Well Financial, Inc.

Plaintiff Flagstar Bank moves to lift the stay because the trial in the criminal case has concluded. To be sure, on April 30, 2021, Hild was convicted of all five counts in the Indictment following a three-week jury trial. *See United States v. Hild*, 19 Cr. 602 (Dkt. Entry No. 70). However, in its motion, Flagstar Bank neglects to mention that Hild has since filed a motion for a judgment of acquittal or a new trial, pursuant to Federal Rules of Criminal Procedure 29 and 33 (the “New Trial Motion”). *See United States v. Hild*, 19 Cr. 602 (Dkt. Entry No. 104). Among other things, Hild has argued that a new trial is warranted because his trial counsel rendered ineffective assistance of counsel due to un-waived conflicts of interest. *See id.* at 15-29. The Government opposed the New Trial Motion (Dkt. Entry No. 118), and it is currently under advisement by the Court. The Court has adjourned the sentencing of Michael Hild, *sine die*, until the New Trial Motion has been decided. *See* Dkt. Entry No. 109.

Because of the possibility of a new trial, there is no basis to lift the stay while the New Trial Motion is pending. Allowing discovery now would implicate the same concerns addressed in the Government’s initial motion to stay. *See* Government’s Motion to Stay, Dkt. Entry No. 25 at 12-14. Principally, Hild could still use this action to circumvent criminal discovery rules. *See Stockwell v. Hamilton*, 2016 WL 3438108, at *4 (E.D. Mich. June 23, 2016) (“A stay protects the United States’ interest in preventing discovery in the civil case from being used to circumvent the more limited scope of discovery in the criminal proceedings.”). Moreover, a stay

CERTIFICATE OF SERVICE

I, Jordan Estes, Assistant United States Attorney for the Southern District of New York, hereby certify that on October 25, 2021, I caused a copy of the foregoing Notice of Motion and Memorandum of Law to be served by ECF on all parties to this action.

Dated: New York, New York
October 25, 2021

/s/

Jordan Estes
Assistant United States Attorney
Southern District of New York
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